UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

CHRIMAR SYSTEMS, INC. and CHRIMAR HOLDING COMPANY, LLC, Plaintiffs, vs. NETGEAR, INC., Defendant.	6:15-cv-00634-JRG-JDL

DEFENDANT NETGEAR, INC.'S MOTION TO TRANSFER VENUE TO THE NORTHERN DISTRICT OF CALIFORNIA

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I. INTRODUCTION

This lawsuit is between northern California-based NETGEAR, Inc. ("NETGEAR"), on the one hand, and Michigan-based Chrimar Systems, Inc. ("CMS") and its made-for-litigation affiliate, Chrimar Holding Company, LLC ("Chrimar Holding"), on the other.[1] NETGEAR is headquartered in San Jose, California and nearly all of its U.S.-based employees are located in the Northern District of California. In fact, NETGEAR's senior management, marketing, product management, operational, sales and financial reporting departments with knowledge of the accused products are based in and managed from the San Jose, California headquarters, as is part of NETGEAR's engineering team. Likewise, the marketing, product management, engineering, operational, sales and financial reporting electronic data and documents related to the accused products are located in or will be collected for this case from San Jose. As such, an overwhelming majority of the relevant evidence and witnesses in this case is located in the Northern District of California.

By comparison, there does not appear to be any relevant and material information in Texas. CMS has had a principle place of business in Michigan since 1993 and does not appear to have an office in this District. And although its affiliate, Chrimar Holding, has an office sharing space in Longview, Texas, the Chrimar Plaintiffs have not yet identified any evidence that is located in Texas and is relevant and material to their claims against NETGEAR.

Given these facts, the Northern District of California is the clearly more convenient forum and this case should be transferred there, pursuant to 28 U.S.C. § 1404(a).

II. FACTUAL BACKGROUND

A. Procedural History of this Action

The Chrimar Plaintiffs filed their Complaint against NETGEAR on July 1, 2015 (Dkt.

[1] CMS and Chrimar Holdings are collectively referred to as the "Chrimar Plaintiffs."

No. 1), and then filed a First Amended Complaint on September 17, 2015. (Dkt. No. 13). According to the Amended Complaint, CMS is the assignee of the four asserted patents.[2] (Dkt. No. 13 at ¶¶ 9, 11, 13 and 15 and Dkt. No. 1 at Exs. A-D). The Chrimar Plaintiffs allege that NETGEAR infringes the patents by "making, using, offering for sale, selling and/or importing into the United States [accused power over Ethernet ("PoE") products]," including but not limited to the WG302 Access Point and FS108P Switch. (Dkt. No. 13 at ¶ 17, 18, 24, 29, 34 and 50). The Chrimar Plaintiffs' infringement theory appears to be based on compliance with the IEEE 802.3(af) or (at) PoE standard amendments. (Dkt. No. 13 at ¶¶ 17, 18). The initial scheduling conference in this case is set for next week on December 8, 2015.

B. NETGEAR Has a Strong Connection to the Northern District of California

NETGEAR is a worldwide provider of technologically innovative, branded networking solutions, including network storage devices.[3] It is headquartered in San Jose, California, and has its principal place of business at 350 East Plumeria Drive, San Jose, California 95134. (*Id.* at ¶ 4). In fact, the senior management of NETGEAR, most of its documents, and approximately 70% of its U.S. employees are based at the company's headquarters in San Jose, California. (*Id.* at ¶ 5). In total, approximately 90% of NETGEAR's U.S. employees are based in California. (*Id.*). Accordingly, several departments at NETGEAR that have primary responsibility for the accused products are located in and managed from the Northern District of California and include the Operations, Marketing, Product Management, Finance and Sales and departments, as well as a part of NETGEAR's Engineering team. (*Id.* at ¶ 6). NETGEAR employees in these departments have information that is relevant to the development, design, product management,

[2] This Motion is based on NETGEAR's understanding of the allegations in the Complaint, Amended Complaint and the Chrimar Plaintiffs' non-confidential materials from other actions.

[3] Declaration of Peter Newton in Support of Motion to Transfer ("Newton Decl.") at ¶ 3.

marketing, sales, and financial reporting for the accused NETGEAR products. (*Id.* at ¶ 7). NETGEAR anticipates that this information will be material to at least the issues of non-infringement and damages (if applicable). That information is known by the NETGEAR employees, who are identified in the Newton Declaration and who are likely to serve as NETGEAR's corporate representatives at trial and/or in response to a Rule 30(b)(6) deposition notice served by the Chrimar Plaintiffs. (*Id.*). All of those employees work in NETGEAR's San Jose, California headquarters. (*Id.*)

Likewise, NETGEAR's electronic data that may be relevant to this lawsuit is located on servers in San Jose, California and Mesa, Arizona and for purposes of this case, that data would be collected by members of the IT department located in San Jose. (*Id.* at ¶¶ 8 and 9). Additionally, NETGEAR has electronic data that may be relevant to this lawsuit on third-party, cloud-based server that are accessed by San Jose-based NETGEAR employees and the IT department during the regular course of their business. (*Id.*). NETGEAR does not have any members of its IT department in Texas or Arizona. (*Id.* at ¶ 9). To the extent that NETGEAR has hard copy documents related to the accused products, such as technical, packaging and marketing documents or exemplary products, those documents and products are located in San Jose. (*Id.* at ¶ 10). Some additional documents regarding the accused products may be located in Taiwan, but NETGEAR does not currently anticipate the need to collect those documents. (*Id.*) Similar to the information known by the identified NETGEAR employees, this documentary and electronic evidence likely will be material to at least the issues of non-infringement and damages.

NETGEAR does not have an office in Texas and does not otherwise maintain any facility in that state. (*Id.* at ¶ 11). Moreover, the three NETGEAR employees, who work out of their homes in Texas, do not possess any unique information about the accused products that is not otherwise known to the more senior NETGEAR employees who are based in San Jose and are more likely to be called to testify as witnesses or corporate representatives in this matter. (*Id.* at ¶ 12).

C. The Chrimar Plaintiffs Do Not Have a Substantive Presence in this District

CMS is the alleged assignee of the four asserted patents. (Amended Complaint at ¶¶ 9, 11, 13 and 15). CMS is incorporated in Michigan and has had a principal place of business there for twenty-two years. (Yungwirth Decl. at ¶ 2 and Ex. 1). CMS is run by John Austermann, III, who lives in Michigan and is CMS's President and Chief Executive Officer. (*Id.* at ¶ 2-4 and Exs. 1-3). Mr. Austermann also has served as the Chrimar Plaintiffs' corporate representative in recent patent litigation brought by the Chrimar Plaintiffs. (Yungwirth Decl. at ¶ 12). Upon information and belief, CMS does not have any employees in Texas. (*Id.* at Exs. 2 and 3).

Chrimar Holding is a more recently formed (2011) affiliate of CMS and it is incorporated in Texas.[4] (*Id.* at ¶ 5 and Ex. 4). According to the Amended Complaint, Chrimar Holding is the exclusive licensee of the asserted patents. (Amended Complaint at ¶¶ 9, 11, 13 and 15). The Amended Complaint alleges that Chrimar Holding's address is "Suite 211-30" in the office building located at 911 NW Loop 281, Longview, Texas. (*Id.* at ¶ 2). That address appears to be in an office sharing suite that is shared with as many as twenty companies that currently have registered the use of Suite 211 at that address. (Yungwirth Decl. at ¶ 6 and Ex. 5). Indeed, a photo of the office space submitted by Chrimar confirms that Suite 211-30 is a sub-office (#30) in Suite 211. (*See* Yungwirth Decl. at ¶¶ 6 and 14, Exs. 5 and 12).

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[4] Chrimar Holding was created in September 2011, only a few weeks before Chrimar commenced a round of patent litigation against several defendants. (Yungwirth Decl. at ¶ 5).

Upon information and belief, Chrimar Holding has at most a single employee in Texas, who does not appear to have knowledge relevant to this dispute. Indeed, Chrimar's most recent Initial Disclosures, served on August 31, 2015, identifies a single Texas-based employee, Ms. Amanda Barnes, who was not disclosed in the last round of cases filed in Texas, which leads one to believe that Ms. Barnes only recently joined the Chrimar team. (Id. at ¶¶ 3 and 4, Exs. 2 and 3). The only information allegedly known by Ms. Barnes relates to "product testing, research and procurement," *i.e.*, litigation support. (*Id*. at Ex. 3). In other words, NETGEAR has not identified any evidence that either Chrimar Plaintiff actually conducts any business in this judicial District aside from pursuing patent litigation.

D. Relevant Non-Party Witnesses and Evidence are Not Located in the Eastern District of Texas

At least one third party witness with information that is relevant and material to this case, Geoffrey Thompson, resides in the Northern District of California. (Yungwirth Decl. at ¶ 7 and Exs. 2, 3 and 6). Mr. Thompson was the IEEE 802.3 Working Group Chairperson at the relevant time (*id*. at Ex. 6) and in that capacity he had dealings with Mr. Austermann regarding CMS's patents. Mr. Thompson also has extensive knowledge of the development of the IEEE 802.3 Ethernet standard and the Power over Ethernet amendments to that standard, which are relevant to the issues of invalidity and unenforceability. (*Id.*). Mr. Thompson will likely be deposed in this action and may be a witness at trial.

For the sake of completing the record, it is noteworthy that the named inventors, John Austermann and Marshall Cummings, live in the Eastern District of Michigan. (Yungwirth Decl. at Ex. 2 and 3). And CMS's patent counsel at Harness, Dickey & Pierce, PLC are in Michigan. (*Id*. at 2 and 3). From a travel convenience perspective, flights from Detroit to San Francisco are at least equally convenient as those to Tyler based on the availability of direct flights to San Francisco and overall travel time to the two districts. (Yungwirth Decl. at ¶ 13 and Ex. 11).

E. The Chrimar Plaintiffs Are Engaged in Patent Litigation Related to this Patent Family in the Northern District of California, the Eastern District of Michigan and this District

The Chrimar Plaintiffs have been pursuing patent infringement claims in the Northern District of California since at least 2013. In a currently pending action, CMS asserts U.S. Patent No. 7,457,250 (the "'250 Patent"). (*See* Yungwirth Decl. at ¶ 8 and Ex. 7 [Docket Sheet for Civil Action No. 4:13-cv-01300-GMS, pending in the United States District Court for the Northern District of California (the "California Action")]). The '250 Patent is the parent or grandparent to the four asserted continuation patents in the instant action. (Dkt. No. 1-2, -3, -4 and -5). In the California Action, the Court already has issued a *Markman* Order (*see id.*), and that action is schedule for trial in August of 2016. *Id.*

The Chrimar Plaintiffs also are pursuing counterclaims for infringement of the four asserted patents in a series of declaratory judgment actions filed in the Eastern District of Michigan between 2013 and July of 2015. (*Id.* at ¶ 9 and Exs. 8(a), (b) and (c)). Those actions currently are stayed by agreement of the Chrimar Plaintiffs. Of particular note, The Chrimar Plaintiffs notified the court in the Michigan actions "that resolution of the California Action is likely to assist the parties in resolving [the Michigan actions], thereby potentially conserving judicial and party resources." (*Id.* at ¶ 10 and Exs. 9(a), (b) and (c)).

The Chrimar Plaintiffs also have filed a series of patent actions in this District involving the same patent family. Some of these actions have been dismissed and of those that remain, the first *Markman* hearing is scheduled in March of 2016 and the first trial is scheduled in October of 2016. (*See* Notice Of Readiness For Scheduling Conference, Case No. 6:15-cv-00163 (Dkt.

No. 10)). All of the actions currently pending in this District remain at the early stages and in a majority of the pending actions, the initial scheduling conference has not been held. (*Id.*).

III. ARGUMENT

A. Legal Standard

Section 1404(a) provides that a district court may transfer a civil action to any district in which it might have been filed "[f]or the convenience of the parties and witnesses" and "in the interests of justice." 28 U.S.C. § 1404(a). The Fifth Circuit has made clear that a transfer should be ordered where the transferee forum is "clearly more convenient" than the plaintiff's chosen venue. *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 315 (5th Cir. 2008) (transferred from EDTX to the Northern District of Texas); *In re TS Tech United States Corp.*, 551 F.3d 1315 (Fed. Cir. 2008) (issuing writ of mandamus ordering transfer of action from the EDTX to the Southern District of Ohio). Plaintiff's venue choice is not a factor to be considered in this analysis: "Fifth Circuit precedent clearly forbids treating the plaintiff's choice of venue as a distinct factor in the § 1404(a) analysis." *Id.* at 1320.

The Fifth Circuit has adopted "the private and public interest factors" test used by many courts to decide transfer requests. *Volkswagen*, 545 F.3d at 315. Where those factors show that another venue is "clearly more convenient," cases not only may, but *should* be transferred. *See id.; TS Tech*, 551 F.3d at 1319. Convenience and costs to parties and third parties, availability of compulsory process, and ease of access to proof generally are important private factors. *See In re Genentech*, 566 F.3d 1338, 1342-45 (Fed. Cir. 2009). And when a substantial number of party and third-party witnesses live in the transferee forum, while few live in the plaintiff's chosen forum, transfer should be ordered. *Id.*; *In re Nintendo Co., Ltd.*, 589 F.3d 1194, 1198 (Fed. Cir. 2009) ("This court has held and holds again in this instance that in a case featuring most witnesses and evidence closer to the transferee venue with few or no convenience factors favoring the venue chosen by the plaintiff, the trial court should grant a motion to transfer.").

Importantly, the Federal Circuit has rejected efforts by plaintiffs to defeat the § 1404(a) convenience analysis by arguing that judicial efficiency based on other suits pending in an inconvenient district overcomes the clear convenience of the transferee forum. *In re Verizon Bus. Network Serv. Inc.*, 635 F.3d 559, 562 (Fed. Cir. 2011) (transfer to a clearly more convenient forum cannot be overcome based on court's prior experience with patent); *In re Morgan Stanley*, 417 F. App'x 947, 949-50 (Fed. Cir. 2011) (finding transfer to a more convenient forum appropriate despite the transferor forum's past experience with one of multiple asserted patents); *In re Apple, Inc.*, 581 F. App'x 886, 889-90 (Fed. Cir. 2014) (finding that prior experience with family of patents cannot overcome balance of other factors favoring transfer), cert. denied sub nom. *EON Corp. IP Holdings, LLC v. Apple Inc.*, 135 S. Ct. 1846, 191 L. Ed. 2d. 725 (2015). In other words, prior suits involving the same patent cannot "override a compelling showing of transfer." *In re Verizon*, 635 F.3d at 562.

B. This Action Could Have Been Brought in California

A threshold question is whether the case could have been brought in the transferee forum. Venue in a patent infringement action is proper in the district where the defendant resides. *See* 28 U.S.C. §§ 1400(b) & 1391. NETGEAR has its principle place of business in San Jose, California and is subject to personal jurisdiction in the Northern District of California. Accordingly, the Chrimar Plaintiffs' infringement claims could have been brought in the Northern District of California and this threshold issue is satisfied.

C. The Private Interest Factors Favors Transfer

After determining that a case could have been brought in the transferee forum, a district court then considers the private interest factors. *Sanofi-Aventis Deutschland GmbH v. Novo Nordisk, Inc.*, 614 F. Supp. 2d 772, 776 (E.D. Tex. 2009). The so-called private interest factors include: (1) the relative ease of access to sources of proof; (2) the cost of attendance for willing witnesses; (3) the availability of compulsory process to secure the attendance of witnesses; and (4) all other practical problems that make trial of a case easy, expeditious, and inexpensive. *Volkswagen*, 545 F.3d at 315.

1. Relative Ease of Access to Sources of Proof

"[A]lmost invariably, this factor will turn upon which party will most probably have the greater volume of documents relevant to the litigation and their presumed physical location in relation to the transferee and transferor venues." *Fujitsu Ltd. v. Tellabs, Inc.*, 639 F. Supp. 2d 761, 767 (E.D. Tex. 2009). The physical location of documents and evidence remains a factor despite advances in copying and electronic data transfer technologies. *Genentech*, 566 F.3d at 1345. Generally, in "patent infringement cases, the bulk of the relevant evidence usually comes from the accused infringer. Consequently, the place where the defendant's documents are kept weighs in favor of transfer to that location." *Id.* (internal quotation marks omitted).

This factor supports transfer because, as noted above, NETGEAR's relevant documents and electronic data are located in the Northern District of California. This includes documents and data related to the development, design, marketing, product management, sales and financial reporting for the accused products. It also includes NETGEAR's hard copy documents and exemplary products that are located in the Northern District of California. (*Id*. at ¶ 10). They are material to the issues of non-infringement and damages that are the subject of discovery in patent cases. Moreover, to the extent any electronic data on the servers in Mesa, Arizona is identified as relevant, it will need to be accessed by NETGEAR's IT employees in San Jose. (Newton Decl. at ¶¶ 8 and 9). There are no such IT employees in Texas or Arizona. (*Id*. at ¶ 9). Finally, with respect to any relevant electronic data stored on third party cloud servers, that data is regularly accessed in the normal course of business by San Jose-based NETGEAR employees or the IT department. (*Id*. at ¶¶ 7, 8 and 9).

Conversely, the Chrimar Plaintiffs are unlikely to have a significant amount of relevant documents and electronic data in this District, given that their substantive corporate presence is in Michigan. In recent briefs, the Chrimar Plaintiffs only identified "documents and hardware relating to CMS Technologies EtherLock products" and SIFOS test results as present in this District. (Yungwirth Decl. at ¶ 14 and Ex. 12 at Ex. C). However, the Chrimar Plaintiffs have not explained the relevance or significance of these documents. In any case, the presence of this limited volume of documents is significantly outweighed by the breadth of NETGEAR documents, data and products in the Northern District of California and the first private interest factor weighs heavily in favor of transfer.

2. Convenience of Witnesses; Cost of Attendance for Willing Witnesses

The convenience and cost of witness attendance is "the single most important factor in the transfer analysis." *Genentech*, 566 F.3d at 1343. Moreover, this factor is to be analyzed in view of the Fifth Circuit's "100–mile" rule, which provides that, "[w]hen the distance between an existing venue for trial of a matter and a proposed venue under § 1404(a) is more than 100 miles, the factor of inconvenience to witnesses increases in direct relationship to the additional distance to be traveled." *In re Volkswagen AG*, 371 F.3d 201, 204-205 (5^{th} Cir. 2004). The question is not whether "*all* of the witnesses" reside in the transferee forum, but whether a "substantial number" are there. *Genentech*, 566 F.3d at 1345; *see also ACQIS LLC v. EMC Corp.*, No. 6:13-CV-639, 2014 WL 5485900, at *3 (E.D. Tex. Sept. 10, 2014).

In this instance, a substantial number of party witnesses live in the Northern District of California, while only one (if any) party witness lives in this District and, therefore, this factor weighs heavily in favor of transfer. *See Nintendo*, 589 F.3d at 1198 ("[I]n a case featuring most witnesses and evidence closer to the transferee venue with few or no convenience factors favoring the venue chosen by the plaintiff, the trial court should grant a motion to transfer."). As discussed above, NETGEAR has specifically identified several employees that led the development, marketing, sale, product management and collection of financial data for the accused products and are located in San Jose. (Newton Decl. at ¶ 7). These witnesses and their San Jose, California-based teams collectively have knowledge regarding the entire life cycle of the accused products from design and development to the end of sale and are likely to serve as Rule 30(b)(6) corporate representatives and/or trial witnesses for NETGEAR depending on the issues that arise in this case. These witnesses will have to travel over 1,700 miles (at a much greater expense and inconvenience) if the case remains in the Eastern District of Texas. (Yungwirth Decl. at ¶ 13 and Ex. 11).

By contrast, NETGEAR is not aware of *any* willing witness in this District who has information that is actually relevant to the issues in the instant action. In recent briefs, Chrimar Plaintiffs argue that Amanda Barnes resides in this District, but she is unlikely to have information that is both material and relevant to the claims in this case given that her primary responsibility is to identify products to accuse of infringement. (Yungwirth Decl. at ¶ 14 and Ex. 12 at p. 5). Moreover, the presence of a single peripheral employee in Texas does not overcome the wealth of witnesses in California, particularly given Chrimar's limited contacts with Texas. *See DSS Technology Management, Inc., v. Apple, Inc.*, 2014 WL 6847569), at *3 (E.D. Tex. Nov. 7, 2014) (J. Love) (the "ephemeral contacts [the plaintiff] has with the EDTX do not merit consideration of the convenience of the witnesses identified by" the plaintiff).

Finally, with respect to any willing witnesses travelling from the Detroit-area, the travel burden is equal between this District and the Northern District of California. Although this

District may be closer as the crow flies, the convenience analysis should take into account "the existence or non-existence of direct flights can impact the analysis of travel time. [Citation omitted]. Thus, regardless of the 'straight line' distances calculated for the '100 mile rule,' if 'travel time' distances favor the transferee venue, then this factor will favor transfer." *See* Order in *IPVX Patent Holdings* at 5 (citing *In re Genentech*, 566 F.3d 1338, 1343 (Fed. Cir. 2009)).

This factor strongly supports a finding that the Northern District of California is the more convenient forum.

3. Availability of Compulsory Process to Secure Attendance of Witnesses

For this factor, the Court evaluates whether the Eastern District of Texas or the Northern District of California has subpoena power over non-party witnesses. *See In re Hoffman-La Roche, Inc.*, 587 F.3d 1333, 1337-38 (Fed. Cir. 2009) (district court should have weighed another venue's absolute subpoena power over non-party witness to favor transfer); *In re Apple, Inc.*, 581 F. App'x 886 (Fed. Cir. 2014) (compulsory-process factor "will weigh heavily in favor of transfer when more third-party witnesses reside within the transferee venue").

NETGEAR has not identified any material non-party witnesses that are located in the Eastern District of Texas or within 100 miles of Tyler, Texas. The two named inventors of the asserted patents are located in Michigan (Messrs. Cummings and Austermann). (Yungwirth Decl. at Exs. 2 and 3). The prosecuting attorneys for the asserted patents are located in Michigan. (*Id.*). In other words, none of these witnesses are within the subpoena power of this Court.

By comparison, one or more third parties, who are likely to have relevant and material information, are within the subpoena power of the Northern District of California. One issue that will be central to this case is the IEEE 802.3 Ethernet standard that predates the four asserted patents and the development of the 802.3(af) amendment that relates to PoE. Information related to this issue is relevant to at least the questions of validity and enforceability. With respect to that issue, one central figure is Geoffrey Thompson, who was the IEEE 802.3 Working Group Chairperson at the relevant time and who had dealings with Mr. Austermann. (*Id.* at Exs. 2, 3 and 6). Mr. Thompson resides in the Northern District of California (*id.*) and is subject to the subpoena power of that Court. Mr. Thompson is a third party, who has not been retained by NETGEAR as a consultant or expert. (Yungwirth Decl. at ¶ 16).

Accordingly, this factor weighs in favor of transfer.

4. Other Practical Factors Favor Transfer to California

The final private interest considerations are the practical problems related to the ease, expense, and expediency of trial. These problems "include those that are rationally based on judicial economy." *DSS Tech.*, 2014 WL 6847569, at *4. And although the existence of duplicative suits in different jurisdictions may have practical implications that weigh in favor of or against transfer, the Chrimar Plaintiffs' decision to file numerous suits in this District concerning the same asserted patents cannot overcome an otherwise strong argument for transfer. *In re Verizon*, 635 F.3d at 562 (a compelling showing on the other transfer factors requires transfer regardless of whether the same court is dealing with the same patents in other suits).

Nevertheless, NETGEAR expects the Chrimar Plaintiffs to oppose this motion based on this Court's prior experience handling cases involving the '012 Patent and the pendency of other lawsuits in this District involving the four asserted patents. These arguments, however, cannot overcome the weight of factors that favor a transfer, particularly given that the Northern District of California also has familiarity with the family of asserted patents.

In fact, the District Court in the California Action already has issued a *Markman* Order and is scheduled to try its case involving the '250 Patent prior to the time that this Court conducts its first scheduled trial involving the four asserted patents. Because the four asserted patents all purport to be continuations of the '250 Patent, the Northern District of California's experience with the '250 Patent will give it a head start (*i.e.*, judicial economy) with respect to its handling the issues of non-infringement, invalidity and unenforceability in this action.

Moreover, the Chrimar Plaintiffs already have agreed that there are common issues between the California Action and other actions involving the four asserted patents, such as those in Michigan. In fact, Chrimar asked the court in the Eastern District of Michigan to stay those actions on that basis. (Yungwirth Decl. at Exs. 9(a), (b) and (c)). According to the Chrimar Plaintiffs, a stay of the Michigan cases was appropriate because the case before the Northern District of California "is likely to assist the parties in resolving this case, thereby potentially conserving judicial and party resources." (*Id.*) Thus, this factor slightly favors transfer to the Northern District of California.

D. The Public Interest Factors Collectively Favor Transfer

The final factors to be considered are the public interest factors including: (1) administrative difficulties flowing from court congestion; (2) local interest in having localized interests decided at home; (3) the familiarity of the forum with the law that will govern the case; and (4) the avoidance of unnecessary problems of conflict of laws or in the application of foreign law. *Volkswagen*, 545 F.3d at 315.

1. Administrative Difficulties Flowing from Court Congestion

The speed with which a case can come to trial and be resolved is a factor in considering a motion to transfer. *Genentech*, 566 F.3d at 1347. However, in situations where "several relevant factors weigh in favor of transfer and others are neutral, then the speed of the transferee district court should not alone outweigh all of the other factors." *Id.* The most recent Federal Judicial Caseload Statistics show that the median time to resolve a case is 7.9 months in the Northern District of California and 8.3 months in the Eastern District of Texas, and the median time to trial in civil cases is slightly longer in the Northern District of California (30 months) compared with the Eastern District of Texas (22.1 months). (Yungwirth Decl. at ¶ 11 and Ex. 10). Accordingly, this factor is neutral.

2. Local Interest in Adjudicating Local Disputes

This factor analyzes the "factual connection" that a case has with both the transferee and transferor venues. *In re Genentech*, 566 F.3d at 1347. Generally, local interests that "could apply virtually to any judicial district or division in the United States," *e.g.*, sale of the accused product that is sold throughout the United States, are disregarded in favor of particularized local interests. *In re TS Tech,* 551 F.3d at 1321.

The Northern District of California has a particular local interest in adjudicating this dispute because NETGEAR's headquarters is located within that district. (Newton Decl. at ¶ 4). Moreover, the accused NETGEAR products are sold and marketed consistently throughout the United States. (*Id*. at ¶ 13). Thus, there is no special significance to the fact that NETGEAR has sold or offered for sale the accused products in this District.

The above facts in combination with the fact that the vast majority of party witnesses and evidence are located in California, and the absence of any substantive connection to the Eastern District of Texas, confirms that the Northern District of California has a greater local interest in this suit. Thus, this factor weighs in favor of transfer.

3. Remaining Public Interest Factors

The remaining public interest factors are neutral given that federal patent law will apply to this case and both Districts are well-equipped to adjudicate patent issues.

IV. CONCLUSION

NETGEAR requests that the Court transfer this case to the Northern District of California, which is a clearly more convenient forum for the claims in this action to be heard.

Dated: December 3, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of **NETGEAR's Motion to Transfer Venue to the Northern District of California** via the Court's CM/ECF system per Local Rule CV-5(a)(3) on December 3, 2015. Any other counsel of record will be served by first class mail.

/s/ Matthew Yungwirth
Matthew Yungwirth

CERTIFICATE OF CONFERENCE

The undersigned herby certifies that counsel for NETGEAR has complied with the meet and confer requirement in Local Rule CV-7(h). This motion is opposed. The personal conferences required by Local Rule CV-7(h) was conducted on December 3, 2015, via telephone conference with the following participants: Matthew Yungwirth for Defendant and Justin Cohen and Richard Wynne for Plaintiffs. No agreement could be reached.

/s/ Matthew Yungwirth
Matthew Yungwirth